CRP 12/2006
BEFORE

THE HON'BLE MR.JUSTICE HN SARMA

Heard Mr H Nath, learned counsel for the petitioner and Mr M Talukdar, learned counsel for the respondents.

Being aggrieved by the judgment and order dated 30.11.2006 passed by the learned Civil Judge (Senior Division) No 3, Guwahati, in TA No 51/2002 setting aside the judgment and order passed by the learned trial Court in TS Mo 258/91 and thereby remanding the suit for re-disposal by framing three issues, the defendant petitioner has filed this revision petition.

The plaintiffs instituted TS No 258/91 before the learned trial Court, inter alia, claiming for a decree for declaration of right, title and interest over the suit land measuring 1 B 1 K 1 covered by KP Patta No 34 of village Bagharbori in Mouza Beltola in the district of Kamrup, for recovery of khas possession of the suit land and the houses standing thereon by evicting the defendants and for other reliefs.

The basis of the claim of the plaintiffs over the suit land is that the suit property is their ancestral property, they have right, title and interest over it but the defendants have dispossessed them illegally. The defendants contested the suit by filing written statements wherein they have claimed that they have purchased the suit property by executing a registered sale deed for valuable consideration and they are occupying the same on the basis of such purchase. The plaintiffs stoutly deny the factum of physical possession by the defendants. After conclusion of hearing the learned trial Court dismissed the suit which was carried into TA No 51/2002. The learned first appellate Court vide judgment and order dated 30.11.2006 allowed the appeal and remanded the same for re-disposal by framing three new issues. Challenging the impugned judgment and order passed by the learned first appellate Court, the present revision petition has been filed.

The learned counsel for the submits that the learned Court in passing the impugned judgment and order has gone beyond the pleadings of the parties and thereby committed jurisdictional error in framing three new issues for decision in the suit. It is submitted that those three issue, in fact, are not emerged from the pleadings of the parties and accordingly, those are not required to be decided and the matter ought to have been decided on the basis of the materials available on records.

Mr Talukdar, however, strongly opposed the contention of the petitioner and submitted that the learned first appellate Court does not commit any jurisdictional error in passing the impugned judgment and order and in such a situation this Court should not interfere with the same.

I have considered the rival contentions of the learned counsel for the parties. I have also perused the materials available before me. The suit of the plaintiff is for declaration of right, title and interest over the suit premises and for recovery of khas possession and for confirmation of possession and also for injunction and for other reliefs. The claim of the defendant petitioners is that they had acquired the right, title and interest over the suit land by purchasing the same vide Ext- Ka. The plaintiff in the plaint specifically pleaded that the defendants are trespassers and they have no semblance of right, title and interest whatsoever to be put into possession over the suit land and houses standing thereon by disturbing the rightful and peaceful possession and enjoyment of the plaintiffs over the suit land. The learned first appellate Court on meticulous consideration of the judgment passed by the learned trial Court while deciding the Issue No 4 arrived at a finding that in order to avail the protection of section 162 of the Assam Land and Revenue Regulation, the learned trial Court should frame such relevant issues. Accordingly, the learned appellant Court framed three issues, namely (i) Whether the suit land falls in the Tribal belt? (ii) Whether the suit land was sold during the ban period ? (iii) Whether the sale of the suit land is illegal void ab initio ? After framing these three issues remanded the matter back to the learned trial Court to be decided by the lea

rned trial Court. The petitioner appears to be not unjustified in making such co ntention that the aforesaid issues do not emerged from the pleadings of the part ies. However, a reading of the impugned judgment and order passed by the learne d trial Court also it is seen that such plea was raised before the learned trial Court. On the other hand, the plaintiff as indicated above, has denied any righ t, title and interest of the defendants to occupy the suit premises. In that vie w of the matter, an Issue regarding such right, title and interest ought to have been there which should have embraced the aforesaid facts. Accordingly, in my c onsidered opinion, there should be a like issue, whether the defendants have acq uired any right, title and interest over the suit premises to dispossess the pla intiff there from ? The aforesaid issue emerges from the pleadings, particularly , from the averments made in the plaint and the defence taken by the parties in the case. In view of the aforesaid discussions, this revision petition is dispos ed of with the direction that the learned trial Court shall hear the parties on the aforesaid issue framed by this Court instead of three issues framed by the l earned appellate Court and dispose of the same.

With the aforesaid modification, this revision petition stands d isposed of. Since this an old suit of the year, 1991, the learned trial Court sh all dispose of the same as expeditiously as possible.